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A SOUTHERN EXPERIMENT IN TOWNSHIP GOVERNMENT.

THE framers of the Constitution of West Virginia (1863), under which the State was admitted into the Union, planned for the gradual introduction of the township as an area of local administration, modeled somewhat after the New England township. It was a novel experiment, which, however, was tried through a period of nine years, at the end of which (1872), by the provisions of a new Constitution of that year, the township ceased to exist as an area of administration except for school purposes. It is not easy to transplant with success the local institutions of one community, in which they have grown up with the growth of the community, into the strange environment of another community, in which have grown up institutions of a different type. I propose in this paper to give an account of the effort to organize the township scheme of New England as the basis of local administration in a section of country south of Mason and Dixon's line, which had never known any other basis than the county. But in order to understand this experiment for all it is worth, it is necessary first to take note of the origin and status of local government in Virginia prior to the formation of West Virginia, as well as the origin and status of the township in those communities where it has formed the unit of local government.

The settlers of New England, generally speaking, came over as organized church societies. Each congregation was a sort of little self-governing democracy, in which the whole free adult male population took part. A church was located; small farms were laid out and houses were built convenient to the church. It was the meetinghouse for worship and the town house for civil government; the rulers of the church were also the rulers of the little state in the wilderness. The area over which they exercised authority they called the town-

ship. Here the people met in primary assembly to determine questions affecting them, whether of Church or State. Here physical conditions, religious considerations, the perils of common dangers, and other circumstances kept the people in comparatively compact groups.

The motives which prompted the settlement of Virginia had their mainspring in the prospective profits of trade. The adventure was primarily commercial. The migrations to Virginia were by individuals, not by groups or congregations. Here large plantations, sometimes containing thousands of acres, were occupied by a single planter, his retainers, and laborers. The coast of Virginia is penetrated by many broad and deep rivers in which the tides of the sea ebb and flow for many miles inland, with a depth sufficient to float seagoing vessels. It was a country fitted by nature for great plantations. Each planter had his own wharf, where he loaded his tobacco on ships which sailed directly to England and where he received from foreign ports such commodities as he desired to buy or trade for. Each plantation was a self-sustaining community within itself. It had its tanners, weavers, shoemakers, and other craftsmen, as well as slave laborers. It could have no near neighbors. Under these circumstances a large district was the only area that could be made available for local government. The conditions favorable for the town meeting did not exist. Meetings of the planters in primary assembly were impracticable. Hence the English county, with its scheme of representative government, became the basis of local government.

Township government as developed in New England, and county government as developed in Virginia, either singly or in combination, have become the prevailing types throughout the United States. In studying the expansion of the United States one is impressed with the fact that wherever the New Englander went as a colonist he took with him and set up his own institutions of local government, and wherever the Virginian went he likewise carried with him the institutions with which he had become familiar.

The settlement of the western slope of the Alleghanies was

effected by types of men somewhat different from either the planter of the South or the tradesman and seaman of the North. The basic element of the population of Western Virginia was, indeed, Virginian; but it was Virginian largely derived from the Shenandoah Valley, with a strong admixture of English, Scotch, Dutch, Swiss, Germans, and Huguenots, to which were added quite considerable elements of migration from the older colonies—Maryland, Delaware, New Jersey, Pennsylvania, New York, and New England.¹ There are very few West Virginians whose ancestors came from the region south of Virginia and Kentucky. The organization of this territory was effected, however, in accordance with the Virginia policy, and the county became the basis of local administration and representation.

It is claimed among the merits of the township system that it trains the citizen to take part in the affairs of local government and fits him for the higher duties to which he may be called; that the town meeting is a primary assembly, a sort of legislature in miniature, in which all adult male citizens are expected to sit as members and to take part in the discussion and determination of public questions. The county system, on the other hand, is barren of any claim as an agency for the political education of the masses in practical questions of local self-government. It has the merit of prompt and convenient dispatch of business; but the mass of the people look to their local officers to do all the thinking for them on questions of local polity. In Virginia, prior to 1851, the suffrage was restricted by a severe property qualification; representation in the Legislature was based in a measure upon property; and the officers for whom even the qualified electors might vote were limited to members of the General Assembly. All other officers, State and local, were chosen by the General Assembly or appointed in some manner. The Governor and officers

¹ Of the seventy-one members who sat in the first Legislature of West Virginia, forty-eight were born in Virginia, three in Maryland, and the remaining twenty north of Mason and Dixon's line. Of the forty-eight native Virginians, a large percentage was born of parents who came, or whose ancestors came, from the Middle and Northern States.

of the State were chosen by the joint vote of the two Houses of the General Assembly; the judges were chosen in the same manner; the clerks of courts were appointed by the courts; sheriffs and justices were appointed by the Governor upon the nomination of the county courts; constables were appointed by the justices. Some modification of this exclusive system was made by the Constitution of 1851. Every white male citizen of the age of twenty-one years, who had been a resident of the State for two years, was made a qualified voter; but the property basis of representation still prevailed. All State, judicial, and county and district officers were made elective with the exception of the Secretary of State, Treasurer, and Auditor, who were chosen by the General Assembly. Thus it will be seen that when the Civil War came the people of Virginia had enjoyed the privilege of choosing their administrative officers during the brief period of ten years. They had not become familiar with practical questions of administration, but had theretofore depended upon their appointed or elected agents and representatives to do all this work for them. The result was to dwarf rather than develop the capacity of the people for local self-administration.

No subdivision of the county in Virginia was at any time made an area of local administration prior to the formation of West Virginia. The Constitution of 1851, it is true, authorized the laying off of counties into magisterial districts, as areas within which justices and constables were thenceforth to be elected; but these districts were essentially election precincts, and played no part in local administration.

The scheme of the township system provided for by the new State divided each county into not less than three nor more than ten townships, reference being had, as far as practicable, to the convenience of the inhabitants and to the equalization of the number of white people to be included in each. The township was made a corporation under the name of "The Township of —, in the County of —." The second section of Article VII. of the Constitution (1863) reads as follows:

2. The voters of each township, assembled in stated or special township meeting, shall transact all such business relating exclusively to their township as is herein, or may be by law, required or authorized. They shall annually elect a Supervisor, Clerk of the Township, Surveyor of Roads for each precinct in their township, Overseer of the Poor, and such other officers as may be directed by law. . . . The Supervisor, or in his absence a voter chosen by those present, shall preside at township meetings and elections, and the Clerk shall act as clerk thereof.

The scheme was not hampered by constitutional handicaps. It could be molded, enlarged, or diminished by statute law to suit the conditions and the capacities of the people. The Legislature passed acts conferring upon the townships very broad powers. Each township was given authority to purchase, hold, and dispose of real estate for the public use and benefit of its inhabitants; to receive and hold grants, devises, bequests, and conveyances for the same use and benefit; and to make all contracts and agreements that might be necessary and convenient in the proper exercise of its corporate and administrative powers. The annual township meeting was held on the fourth Thursday in April under the presidency of the Supervisor. Minute details respecting the transaction of business were prescribed by statute.²

In addition to the officers named in the Constitution, the Legislature provided for a treasurer,³ a township committee,⁴ school commissioners,⁵ inspectors of elections,⁶ etc., and defined their powers and duties. The voters of the township at any legal meeting could make by-laws for the government of their meeting and for the conduct of affairs committed to their administration, subject to the limitations prescribed by law; and could impose fines and penalties for the violation of such by-laws.⁷ In addition to the rates imposed by general law, the voters of the township in any regular or special meeting, provided two-thirds of the whole number of voters present, or a number equal to a majority of all the votes in the

² Acts of West Virginia, 1863, Chapters 46 and 89.

³ *Ibid.*, Chapter 89, Section 8.

⁴ *Ibid.*, Section 17.

⁵ *Ibid.*, 1863, Chapter 137.

⁶ *Ibid.*, 1863, Chapter 100, Section 7.

⁷ *Ibid.*, Section 2.

township agreed, might levy taxes on the property of their township for the following purposes within the limits specified:⁸ For the maintenance and improvement of the free schools; for the purpose of procuring the necessary land, and erecting schoolhouses and furnishing them; for purposes of public roads and bridges; for purchasing land and erecting thereon a township hall for the use of the township meeting and for the purposes of the township government; for purchasing land and maintaining thereon a public cemetery. In short, the design looked forward toward making the township the primal unit of local self-government instead of the county, in all those matters of local affairs pertaining exclusively to the township.

To what extent were these powers exercised? Patient research has failed to disclose the exercise of a single one of them that may be called the additional powers relating to the police and fiscal affairs of the township. Township meetings were indeed held, but they were held for the primary purpose of electing officers, not for purposes of local administration of public affairs. No townhouse was ever erected, and no additional rate was ever voted in any township for any of the purposes mentioned above.⁹ Why, during a period of nine years (1863-1872), when the Constitution and laws were constructed with that object in view, did the voters of the township fail to make the township a primal unit of local administration? A number of causes contributed to the failure: (1) The inexperience of the people in conducting for themselves the affairs of local administration; (2) the turmoil, strife, and distractions of the Civil War and the period of reconstruction following it; (3) the heavy burden of taxation already resting upon the loyal counties during these years, which forbade the levying of additional taxes for the purposes enumerated

⁸ *Ibid.*, Section 19.

⁹ This statement is based upon information derived from men still living who held the offices of supervisors and clerks of townships. Some men still living, who were supervisors, and whose duty it was to preside at township meetings, have said to me that they do not remember that such meetings were ever held. Clerks, whose duty it was to keep a journal of these meetings, say that they do not remember ever keeping such a journal.

in Section 19 and Chapter 89 of the Act of 1863, above referred to; and (4) perhaps the most potent cause, the fact that the jurisdiction of the township and the county overlapped—that is to say, was concurrent—upon all questions of roads, bridges, ferries, charities, etc. The sole subject over which the county had no control was the establishment, maintenance, and improvement of the system of free schools and the administration of school affairs; and the township (or district) became and continues to be the unit for the administration of school affairs. All other subjects of local administration have been taken over by the counties.

The Constitution (1863) with respect to county government provided as follows:¹⁰

The Supervisors chosen in the townships of each county shall constitute a Board, to be known as "The Supervisors of the County of —," by which name they shall sue and be sued, and make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of the State. . . .

The Board of Supervisors . . . shall . . . have the superintendence and administration of the internal affairs and fiscal concerns of their county, including the establishment and regulation of roads, public landings, ferries, and mills. . . .

The people had become accustomed to the administration of their affairs of local government by officials appointed prior to 1851, and elected by popular vote during the decade preceding the breaking out of the Civil War. The county as a unit of local administration was left undisturbed. The township might act in aid of the administration of the affairs with which the county was charged, and, had the voters of the township been so disposed, they might in the course of time have taken over to themselves practically the entire administration of these affairs. But to do so successfully called for a degree of training based upon experience, usage, and custom in which these people at the moment were wanting. The county had heretofore looked to these questions of administration; let it continue to do so. It is an interesting query that suggests what might have taken place if the Constitution had made the township the sole primary unit of local administration upon all questions, without the county board of

¹⁰ Art. VII., 3 and 4.

supervisors to lean upon, as was done in the case of school affairs. In a few instances it seems that township meetings were called; but usually a mere handful of voters attended, and nothing of importance was done of an administrative character. The original statute required no more than twenty voters to constitute a quorum at a township meeting; but we may infer that even this small number was sometimes wanting, because in 1865 we find an act providing that ten may make a quorum.¹¹ While the voters seem to have been utterly indifferent to a participation in the affairs of the local government through the medium of a popular primary assembly, they were alert when there was on hand the election of officers whose duty it should be to administer these affairs in their behalf. Experience demonstrates that year after year the elected local official makes it his business to ascertain the popular will upon questions of local administration, and woe betide him if he disregards it. It is by no means certain that the West Virginian has not chosen that system which is best adapted to his needs.

The civil administration of the county by a board of supervisors composed of one member elected annually from each township seems to have worked well in most localities. In accordance with this scheme the county board was composed of from three to ten members, depending on the size of the county and its population. This was purely an administrative board, and had no legal jurisdiction whatever. In this it differed radically from its predecessor under Virginia, the old monthly court composed of justices, unlearned in the law, who had civil, criminal, and equity jurisdiction.

The period of reaction along the border following the war, the period that is coeval with the period of reconstruction, witnessed the overthrow of the whole system of local government created under the Constitution of 1863. A convention was called in 1872 to frame a new Constitution. It was an unfortunate moment at which to call a constitutional convention. Disfranchisement for participation in the rebellion, or for sympathy with it, had aroused prejudice and strife; and

¹¹ *Ibid.*, Chapter 60.

the Flick amendment to the State Constitution had set them free, and their fury was not spent for another decade. The ultra party that had organized the State had fallen into disfavor. The thrusting of the ballot into the hand of the recently freed negro, who as yet was incapable of making intelligent use of it, drove great numbers of men, who had espoused the cause of the Union, away from their party affiliations during the war. The membership of the majority in the convention represented all the reactionary elements precipitated by the Civil War, the thirteenth, fourteenth, and fifteenth amendments to the Constitution of the United States—registration, disfranchisement, dissatisfaction with political and administrative conditions, and disappointed political ambition. Indeed, the minority could muster only twelve adherents out of a total membership of seventy-eight, and these were dubbed the “twelve apostles.”¹² The township system and all that depended upon it were looked upon with disfavor as an importation. This was enough. It was doomed. Even the word “township” was erased from the statute book; the boards of supervisors went with it; and in place thereof was substituted and restored that cumbrous old piece of machinery of county government known as the county court—the “’Squi’es’ Co’t”—as it existed in Virginia before the war. During the last decade West Virginia had outgrown this antiquated system. It proved so out of date and so unsatisfactory that the party that restored it to operation submitted a constitutional amendment in 1881, providing for the present system of a board of three county commissioners, which was adopted.

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¹² There was a St. Peter and a Judas Iscariot among them.